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# Utah v. Hughes : Unknown

Utah Court of Appeals

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Jeffrey T. Colmere; Mark L. Shurtleff; O. Brenton Rowe; Attorneys for Appellee.

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IN THE UTAH COURT OF APPEALS

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State of Utah,	)	
	)	
Plaintiff and Appellee,	)	ORDER
	)	
v.	)	Case No. 971686-CA
	)	
Tarrell McKay Hughes,	)	
	)	
Defendant and Appellant.	)	

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Before Judges Jackson, Davis, and Greenwood.

This case is before the court on the State's Motion to Strike Reference to Rule 23B Affidavit from Defendant's Brief. The purpose of a rule 23B affidavit is to support the motion for remand, which was denied in the case. However, the State correctly notes that regardless of whether remand is granted or not, the affidavit filed in the appellate court does not become evidence that may be cited as support for the claims on appeal. See State v. Bredehoft, 966 P.2d 285, 290 (Utah Ct. App. 1998). The references to the affidavit and its inclusion as an addendum are inappropriate.

IT IS HEREBY ORDERED that the motion to strike is granted. The affidavit submitted in support of Appellant's rule 23B motion is stricken, and the first full paragraph on page 20 of the brief is stricken insofar as it refers to the affidavit as a factual basis for the claim that trial counsel did not preserve claims or create an adequate record for appeal.

DATED this 18th day of June, 2002.

FOR THE COURT:

  
Pamela T. Greenwood, Judge

CERTIFICATE OF MAILING

I hereby certify that on June 19, 2002, a true and correct copy of the foregoing ORDER was deposited in the United States mail to the parties listed below:

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Dated this June 19, 2002.

By   
Deputy Clerk

Case No. 971686